

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pasadena Neighborhood Coalition,

Complainant,

vs.

Altrio Communications, Inc.,

Defendant.

Case 02-11-053
(Filed November 19, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON PENDING REQUESTS**

Background

The evidentiary hearing in this proceeding, initiated by the complaint of the Pasadena Neighborhood Coalition (Coalition) that defendant Altrio Communications, Inc. (Altrio) is in violation of the requirements of Decision (D.) 01-07-022, was held June 3 – 4, 2003. Opening and responsive briefs were filed and the matter was submitted on July 10, 2003. In their briefs and in subsequent filings, both parties made a variety of requests. This ruling disposes of all pending requests not addressed in prior rulings.

Discussion

1. Official Notice of Briefing

In its Petition to Set Aside Submission and Reopen the Proceeding for the Taking of Additional Evidence & Supplementary Briefing (Petition), filed July 31, 2003, Altrio requested that the Commission take official notice of supplementary

briefing provided by Altrio on issues related to the California Environmental Quality Act, Pub. Res. Code §§ 21000 *et seq.* (CEQA). Under Rule 73 of the Commission's Rules of Practice and Procedure, the Commission may take official notice "of such matters as may be judicially noticed by the courts of the State of California."¹ A party's legal arguments about an issue in this proceeding is not a proper subject for official notice. Altrio's request for such notice should be denied.

2. Claims of Rule 1 Violations

Both parties have made several submissions asserting that the other has violated Rule 1.² None of these submissions was in the form of a motion pursuant to Rule 45. In their filings, the parties have accused each other of a variety of activities that are claimed to be in violation of the duty not to mislead the Commission or its staff.

In its Opening Brief, the Coalition claims that Altrio violated Rule 1 by: (1) not disclosing to Commission staff that it had applied for construction authority from the City of Pasadena (City) to construct its Open Video System

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

² The rule provides that:

Any person who signs a pleading or brief, enters an appearance at a hearing or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

(OVS) network; (2) leading the Commission to believe that Altrio would go forward to completion of Commission review of its Proponent's Environmental Assessment (PEA), filed July 18, 2001 in Application (A.) 00-10-044; and (3) failing to complete the PEA review process although Altrio knew that its OVS construction project would cause environmental harm. In its Reply Brief, the Coalition reasserts its claim that Altrio failed to inform staff of its application for construction authority from the City.

In turn, Altrio asserts in its Reply Brief that the Coalition violated Rule 1 by: (1) violating a ruling of the Administrative Law Judge (ALJ) about the use of stricken testimony in briefing; (2) making legal arguments about the legality of the City's grant of an exemption from CEQA for the OVS construction project; (3) wrongly claiming that the construction project has done environmental harm; and (4) claiming that Altrio violated Rule 1 by not informing staff that it had applied to the City for construction authority. In its Petition, Altrio adds the claims that the Coalition violated Rule 1 by: (1) failing to provide to the Commission a document filed in the Superior Court case, *Robert P. Kneisel v. City of Pasadena*, BS079863 (Los Angeles Superior Court);³ and (2) misstating several aspects of CEQA law in its Reply Brief.

Taken as a whole, the papers alleging violations of Rule 1 present the parties' complaints about each other's assertedly slanted legal arguments, overly aggressive litigation tactics, and forum shopping. Such practices are not condoned by the Commission. Nevertheless, no violations of Rule 1 have been demonstrated in this proceeding. The parties' attacks on each other's alleged bad

³ Altrio's request for official notice of this document was denied in an ALJ Ruling dated August 8, 2003.

behavior do not include any argument or evidence that the identified actions of the other party had the effect of misleading the Commission, the ALJ, or staff. (See *Re Competition for Local Exchange Service*, D.01-08-019, *mimeo*, pp. 8-9.) Since neither Altrio nor the Coalition has shown that the alleged Rule 1 violations of the other had some impact on the actions of the Commission, the ALJ, or staff, neither has shown that Rule 1 has been violated.

IT IS RULED that:

1. The request of Altrio Communications, Inc. (Altrio) for official notice of the “supplementary briefing” in its Petition to Set Aside Submission and Reopen the Proceeding for the Taking of Additional Evidence & Supplementary Briefing (Petition), filed July 31, 2003, is denied.
2. The supplementary briefing provided in Altrio’s Petition is accepted as a supplement to Altrio’s Reply Brief.
3. The Motion to Strike Portions of Altrio’s Reply Brief, filed by the Pasadena Neighborhood Coalition (Coalition) on July 25, 2003, is denied.
4. The Coalition’s Opposition to Altrio’s Request for Sanctions, presented in the alternative to the Motion to Strike, is accepted.
5. Altrio’s Response to Motion to Strike, filed July 31, 2003, is accepted.
6. All requests for the imposition of sanctions under Rule 1 made by either party at any time during this proceeding are denied.

Dated August 29, 2003, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Pending Requests on all parties of record in this proceeding or their attorneys of record.

Dated August 29, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.